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June 23, 1993

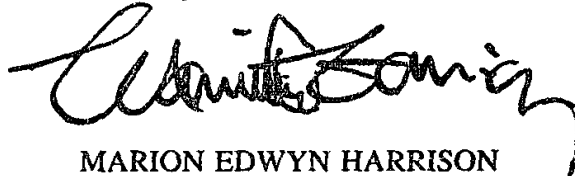
Jonathan A. Bernstein, Esquire
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: **Free Congress Foundation/National Empowerment Television**
MUR 3774

Dear Mr. Bernstein:

We file herewith the Answer of Free Congress Foundation.

Sincerely,



MARION EDWYN HARRISON

cc: **Free Congress Foundation**

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Complaint of

Democratic Senatorial Campaign Committee

MUR 3774

ANSWER OF FREE CONGRESS FOUNDATION

I. Introduction

The Federal Election Commission ("FEC") by letter dated May 20, 1993, forwards a 208-page package to "National Empowerment Television[,] William J. Bennett, Chairman".

National Empowerment Television ("NET") is an unincorporated project or division of the Free Congress Research and Education Foundation, Inc., commonly called Free Congress Foundation ("FCF"), and does not exist as a separate and independent legal entity. To minimize the confusion created by the Complaint, reference herein when possible is to FCF, which to the extent applicable includes NET, its wholly owned and unincorporated project or division.

The Complaint herein is filed by Counsel for the Democratic Senatorial Campaign Committee ("DSCC") against the National Republican Senatorial Campaign Committee ("NRSCC"), evidently principally as part of a campaign to attempt to set aside, or otherwise impune, the election of Senator Paul R. Coverdell over former Senator Wyche Fowler, Jr., which

occurred on November 24, 1992.¹ The Complaint more readily is recognizable as a political polemic than a proper pleading.

FCF is not named as a Respondent.²

II. Issues

1. The Complaint is sufficiently inartfully drafted, and bereft of proffered evidence, that one finds difficulty in determining the issue or issues DSCC seeks FEC to investigate.

The relief, as prayed for by DSCC, is that FEC:

1. Conduct on an expedited basis an investigation of the facts set out above and determine the exact dollar amounts of illegal spending by the [NRSCC];
2. Enter into a prompt conciliation with Respondents to remedy the violations alleged in this Complaint, and most importantly, to ensure that the violations will not recur; and

¹ An action at law to set aside the election has been unsuccessful. *Public Citizen, Inc. v Miller*, __ F 2d __ (11th Cir, 1993), 1993 WL 177197 (Jun 14 93).

² Four Respondents are named in the Complaint, at 3. They are "National Right to Life Committee", "Coalitions For America", "American Defense Foundation" and "Good Government Committee, Montgomery, Alabama". None, upon information and belief, has a connection with the other or with NRSCC. None has a nexus with FCF/NET. FCF/NET has no nexus with NRSCC.

3. Impose any and all penalties grounded in violations alleged in this Complaint.

With respect to the Complaint, at 18, ¶1, the issue which DSCC appears to identify is whether FEC, after "an investigation of the facts set out" in the Complaint, would find "illegal [sic] spending by" NRSCC and, if so, the quantum.

That issue does not implicate FCF.

2. In the Complaint, at 18, ¶2, DSCC requests FEC "to [e]nter a prompt conciliation agreement with Respondents ..."

Inasmuch as FCF is named as a Respondent there is no issue.

3. In the Complaint, at 19, ¶3, DSCC requests FEC to impose penalties.

Leaving aside the vagueness of the prayer, inasmuch as FCF is not a Respondent, and for the further reason that no violation is alleged against FCF, there is no issue or remedy applicable to FCF.

III. Argument

FCF is qualified pursuant to 26 USC §501(c)(3) as a

... [c]orporation ... organized and operated exclusively for ... charitable ... or educational purposes ... *which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.* [Emphasis supplied.]

As such, FCF is precluded from participating, and does not participate, directly or indirectly, in political campaigns. More specifically, contrary to the introductory broadbrush allegation of the Complaint, at 1, FCF not only has not "undertaken a significant and sustained effort to funnel 'soft money' into federal elections ..." but, in fact, neither directly nor indirectly has contributed to, financed, participated in or "funneled" money, soft or otherwise, however defined, into a federal election. Swanson Affidavit, *Attachment One*.

In an unnumbered section entitled THE FACTS IN THIS CASE, at 2, DSCC argues that there was a runoff election in Georgia in which many Republican leaders supported the candidacy of the ultimately successful Republican candidate, now Senator Coverdell. DSCC pieces together excerpts, largely from press stories, to paint, in the loosest and cloudiest of tints, a picture of some kind of undefined cooperation among identified and unidentified participants.

The following references, and none other, arguably relate to FCF.

At 5, the Complaint erroneously states that Coalitions For America ("CFA") was:

... created as a subsidiary of [Mr. Paul M.] Weyrich's Free Congress Foundation [and] its principal activity has been the establishment of a satellite network for conservatives - the Empowerment Network.

DSCC then recites its version of the facts with respect to the goals and aspirations of "the Empowerment Network", the correct name of which - as noted, supra - is National Empowerment Television.

No quotation links FCF to the Georgia campaign, to any campaign or to the expenditure of any money for a political purpose. After out-of-context excerpts from statements made by Mr. Paul M. Weyrich, none relating to the expenditure of funds, whether soft money or otherwise, for a political campaign, the Complaint drifts off into other discussion, statements from various persons in various contexts at varying times and then, at 10, abruptly concludes that:

These overlapping interests are not coincidental, but rather reflect the systematic efforts of the Republican party [sic] to coordinate its election efforts with conservative organizations ...

There is neither allegation nor proffered evidence that FCF's interests have so overlapped; that the Republican Party has coordinated with FCF; that FCF has coordinated with [unnamed] "conservative organizations"; or that FCF has utilized funds for a political purpose.

The Complaint continues, at 11, with what purports to be the "history of similar [sic] activities by [the] Republican Party" - again with neither allegation nor tie to FCF.

Finally, at 13, the Complaint purports to set out federal election law. One need not address the accuracy of the recitation because neither by allegation nor by proffered evidence does the recitation implicate FCF.

The mixture of recitation and argument concludes at 17-18, with the conclusory statement that NRSCC clearly has used other organizations systematically to violate "... source restrictions and expenditure limits established for federal elections by law." DSCC then alleges "a strong likelihood" of further [sic] violations and requests (1) an FEC investigation; (2) "prompt conciliation with Respondents" (of which FCF is not one); and (3) imposition of penalties (presumably upon NRSCC), at 17-19.

Proffered evidence adds nothing to the fluff of the Complaint.

Exhibit 1³ consists of photocopies of excerpts from newspapers which, as a fundamental rule of evidence, would prove, if admitted into evidence, only that the words and pictures were printed and not the truth thereof. However, if one ascribes literal truth to the contents - a rash assumption in view of the rampant editorialization, DSCC establishes, at most, that the Georgia race vigorously was contested; that there was much national interest in the race; and that victorious Senator Coverdell received support from a number of people and groups other than

³ It would be helpful if Counsel for DSCC had followed the customary practice of numbering the pages of the record.

FCF.⁴

Exhibit 2 appears to be an excerpt from an NRSCC Schedule B FEC filing, which does not relate to FCF.

Exhibit 3 appears to be further FEC filing excerpts, purportedly by the National Right to Life Political Action Committee; further press stories; and an unsigned purported memorandum from somebody whom DSCC asserts was a campaign employee of defeated Senator Fowler. No such proffered evidence implicates FCF.

Exhibit 4 purports to be an excerpt from a CNN transcript, which purportedly quotes Mr. Weyrich's making a statement notable for its lack of reference to a political campaign.⁵

Exhibit 4 continues with what appear to be excerpts from press clippings. In one such excerpt, triumphantly asterisked by an unidentified hand, Mr. Weyrich is quoted as expressing the unhappiness of conservatives with the Bush Administration and of reflecting the sentiment that conservatives:

... should forget about the Presidency and concentrate on Senate races and House races and term-limitation initiatives and other things that matter to us.

⁴ Throughout the exhibits an anonymous hand has highlighted various words, sentences and paragraphs. These generally are no more relevant than those which are not highlighted.

⁵ The excerpt, in fact, counters DSCC's theme, for it is a conclusory criticism of the Bush Administration!

Exhibit 5 consists of excerpts from what appears to be a brochure or leaflet touting NET; an *Insight* signed piece further discussing NET and NET programming; and a David Gergen piece noting the innovation of NET.

DSCC apparently seeks to imply participation in a political campaign via a statement by an editorialist, one Shawn Miller, otherwise unidentified, which is asterisked, referring to somebody's alleged:

... optimism regarding further activities in the states, with Georgia poised to follow Wisconsin as the next state affiliate.

The excerpt deals not with a political campaign but with local viewing site satellite dish affiliation with NET.

Exhibit 6 excerpts further clippings, this time apparently from *Policy Review*, which, inter alia, purport to quote, in the asterisked paragraphs, certain comments of Mr. Weyrich analyzing conservative activity in American churches. The excerpts, to the extent specific, relate to CFA. They have nothing to do with political campaigns.

Exhibit 7 consists of further excerpts from an FCF publication, *Empowerment!*. The asterisked excerpt is a technical statement as to how one can participate in NET. The next pages appear to be excerpts from a publication entitled *Think Tanks* which profiles certain activities of FCF. It is noteworthy that the profile recites that FCF has no member, no branch, no chapter

and no affiliate. The profile, to the extent it is not objective, is derogatory and presumably would claim political activity if the anonymous compilers/authors/editors thought there were any.

Exhibit 8 consists of another piece by the otherwise unidentified Shawn Miller, also purportedly from *Insight*, which discusses Mr. Weyrich and NET. There also is another David Gergen piece discussing the NET approach. These pieces inexplicably replicate Exhibit 5.

Exhibit 9 evidently is a copy of a brochure describing FCF activities. There is no reference to participation in political campaigns.

Exhibit 10 is yet another series of what appear to be newspaper stories, without reference to FCF.

Exhibit 11 is further such excerpts, with similar absence of citation or reference to FCF.

Exhibit 12, further excerpts, apparently all from *The Nation*, is mostly editorial comment, none relating to FCF.

Exhibit 13 is a further newspaper clipping excerpt, with no relation to FCF.

Exhibit 14 appears to be further press stories, unrelated to FCF.

Exhibit 15 consists of excerpted pages from *The Congressional Directory* and some press stories, unconnected with FCF. It appears to quote from a Weyrich statement about the significance of abortion as a political issue. Another excerpt passingly mentions Mr. Weyrich.

There is further editorial discussion. FCF, NET and Mr. Weyrich scarcely are mentioned. As recurs from time to time, one of the few Weyrich quotations is less than affirmative about the Republican establishment.

Exhibit 16 replicates what appears to be a piece from *National Journal*, with no reference to FCF or NET.

Exhibit 17 consists of irrelevant excerpts from Senate debate as published in *The Congressional Record*.

Exhibit 18 consists of further irrelevant congressional testimony.

And there the bundle of irrelevance concludes.

IV. Conclusion

Fully accepting, arguendo, the truthfulness and accuracy of every hearsay statement presented to FEC by DSCC, it is clear beyond cavil that no evidence is proffered to implicate

FCF in the expenditure of funds in connection with any federal election, including the November 3, 1992 Georgia senatorial election and the November 24, 1993 Georgia senatorial runoff election.

The Complaint appears to be a charade to attempt to set aside, or otherwise impune, the election of a United States Senator and to attempt to embarrass a number of organizations some of all of which have committed no unlawful act - and, in the case of FCF, have committed no act whatever relating to the subject matter.

FCF would jeopardize its statutory tax-exempt status, and thereby its livelihood, were FCF to violate the clear prohibition of 26 USC §501(c)(3).

FCF has not done so. The proffered evidence is bereft of linkage between FCF and any such violation.

If DSCC had filed this Complaint in a federal court, the redress of Rule 11⁶ would be applicable and those who signed the Complaint would risk sanctions.

⁶ FR Civ P 11.

FEC forthwith should dismiss FCF, and with it NET, from MUR 3774.⁷



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Counsel for Free Congress Research and
Education Foundation, Inc.

June 23, 1993

⁷ If DSCC has a scintilla of evidence that FCF has spent tax-exempt money participating in, or intervening in, a political campaign, DSCC could present that evidence in the proper forum.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MUR 3774

AFFIDAVIT OF MRS. ROSEMARY SWANSON

Mrs. Rosemary Swanson, first sworn, deposes and says as follows:

1. I am Vice President of Finance and Administration of Free Congress Foundation ("FCF").
2. If FCF had extended funds in connection with the 1992 Georgia senatorial elections, or with respect to any other political campaign, I would know about it.
3. FCF has spent no money directly or indirectly with the said Georgia political campaigns or any other political campaign.
4. FCF, as a matter of policy and as a condition of its tax status, does not participate in political campaigns.

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Further Affiant sayeth not.

Rosemary Swanson
(Mrs.) ROSEMARY SWANSON

District of Columbia }
 }ss
City of Washington }

Subscribed and sworn to before me this 16th day of June, 1993.

Linda M. Wallace
Notary Public

My commission expires Jan. 31, 1997.